

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KATZ-LACABE, ET AL, ) CV-22-4792-RS  
)  
PLAINTIFFS, ) SAN JOSE, CALIFORNIA  
)  
VS. ) AUGUST 8, 2024  
)  
ORACLE AMERICA, INC., ) PAGES 1-16  
)  
DEFENDANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS BY ZOOM  
BEFORE THE HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: **BY: DAVID TAYLOR RUDOLPH**  
**JOHN MAHER**  
**MICHAEL SOBOL**  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 BATTERY STREET, 29TH FLOOR  
SAN FRANCISCO, CA 94111

FOR THE DEFENDANT: **BY: TIFFANY CHEUNG**  
MORRISON & FOERSTER LLP  
425 MARKET STREET  
SAN FRANCISCO, CA 94105

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

AUGUST 8, 2024

2 P R O C E E D I N G S

3 (COURT CONVENED AT 1:30 P.M.)

4 THE CLERK: CALLING CASE 22-4792. KATZ-LACABE VERSUS  
5 ORACLE AMERICA.

6 COUNSEL, PLEASE COME FORWARD AND AND STATE YOUR  
7 APPEARANCES.

8 MR. RUDOLPH: GOOD AFTERNOON, YOUR HONOR.

9 DAVID RUDOLPH FROM LIEFF CABRASER HEIMANN AND BERNSTEIN  
10 FOR THE PLAINTIFFS, AND WITH ME ARE MY COLLEAGUES MICHAEL SOBOL  
11 AND JOHN MAHER.

12 MS. CHEUNG: GOOD AFTERNOON, YOUR HONOR.

13 TIFFANY CHEUNG FROM MORRISON & FOERSTER ON BEHALF OF THE  
14 DEFENDANT.

15 THE COURT: GOOD AFTERNOON.

16 SO WE ARE HERE FOR CONSIDERATION OF PRELIMINARY APPROVAL  
17 FOR THE PROPOSED RESOLUTION OF THIS MATTER. I HAVE GONE OVER  
18 WHAT YOU PROVIDED TO ME AND I JUST HAVE A FEW QUESTIONS.

19 MY UNDERSTANDING IS YOU'VE GOT A COMMON FUND OF 115  
20 MILLION; IS THAT RIGHT?

21 MS. CHEUNG: YES, YOUR HONOR.

22 MR. RUDOLPH: THAT'S CORRECT, YOUR HONOR.

23 THE COURT: AND YOU ESTIMATE THAT WOULD TRANSLATE  
24 INTO \$15, \$25 PER CLASS MEMBER RECOVERY.

25 MR. RUDOLPH: BASED ON OUR PREDICTIONS OF THE CLAIMS

1 RATE.

2 THE COURT: OKAY.

3 NOW WE HAD SOME LITIGATION ABOUT WHETHER OR NOT YOU COULD  
4 HAVE A NATIONWIDE CLASS AND YOU'VE PROPOSED A SETTLEMENT THAT  
5 DOES HAVE A NATIONWIDE CLASS. YOU DIDN'T PREVAIL ON THAT  
6 ISSUE. JUST -- I KNOW THERE IS CASE AUTHORITY FOR THE  
7 PROPOSITION THAT YOU CAN, EVEN IN THE FACE OF NOT BEING ABLE TO  
8 PROCEED ON THAT BASIS, SETTLE IT ON THAT BASIS, BUT WHY DON'T  
9 YOU SUMMARIZE THAT FOR ME.

10 WHY CAN WE SETTLE THIS ON A NATIONWIDE BASIS AFTER I HAD  
11 CONCLUDED THAT YOU WEREN'T GOING TO BE ABLE TO PROCEED THAT  
12 WAY?

13 MR. RUDOLPH: RIGHT.

14 SO THE CASE LAW YOU ARE REFERRING TO IS VERY CLEAR AT  
15 CLASS CERTIFICATION FOR SETTLEMENT PURPOSES THAT THE COURT  
16 DOESN'T NEED TO ENGAGE IN A CHOICE OF LAW ANALYSIS AND THAT IT  
17 CAN FIND PREDOMINANCE EVEN WHERE THERE MIGHT BE ISSUES --  
18 DIFFERENCES IN THE LAW OF THE VARIOUS STATES.

19 HERE WE HAVE A SITUATION WHERE WHAT WAS ALLEGED WERE  
20 CALIFORNIA CLAIMS, FLORIDA CLAIMS AND A NATIONWIDE CLASS. WE  
21 DIDN'T PREVAIL ON THE NATIONWIDE CLAIM FOR THE ECPA CLAIM BUT  
22 UNDER CARLOTTI AND HANLON, THE COURT CAN LOOK TO THE FEDERAL  
23 CLAIM AS SOMETHING THAT BINDS TOGETHER THE CLASS EVEN THOUGH  
24 THERE MIGHT BE DIFFERENCES AMONG STATE LAW WITH RESPECT TO THE  
25 OTHER CLAIMS.

1 SO FOR THE PURPOSES OF SETTLEMENT, THE COURT DOESN'T NEED  
2 TO ENGAGE IN THAT ANALYSIS AND THE ECPA CLAIM IS REALLY -- CAN  
3 BIND TOGETHER THE NATIONWIDE CLAIMS.

4 THE COURT: OKAY. IN TERMS OF THE OVERALL VALUATION  
5 OF YOUR CLAIMS AND YOUR JUSTIFICATION FOR THE REDUCTION OFF OF  
6 THOSE -- OF THE VALUE, IN TERMS OF WHAT YOU'VE NEGOTIATED FOR A  
7 SETTLEMENT, GIVE ME SOME IDEA OF HOW YOU CAME UP WITH THE  
8 OVERALL VALUE OF THE CLAIMS, BECAUSE YOU HAVE NON-MONETARY  
9 ASPECTS TO IT AND MONETARY ASPECTS TO IT. BUT GO THROUGH YOUR  
10 VALUATION ANALYSIS AND THEN YOUR REASONING FOR WHY THE 115  
11 MILLION FUND IS APPROPRIATE HERE WHERE I THINK YOUR CLAIMS WERE  
12 VALUED AT SOMEWHERE IN THE BILLION.

13 MR. RUDOLPH: THE BILLIONS, POTENTIALLY.

14 SO WHAT WE HAVE HERE IS A SET OF COMMON LAW CLAIMS, STATE  
15 WIRE TAP CLAIMS AND A FEDERAL WIRE TAP CLAIM. VALUING THE  
16 COMMON LAW CLAIMS IS DIFFICULT. PRIVACY CLAIMS HAVE NOT GONE  
17 TO TRIAL ON A CLASS BASIS, IT'S HARD TO KNOW WHAT THE JURY  
18 VERDICT WOULD BE, PLAINTIFFS ARE AT LEAST ENTITLED TO NOMINAL  
19 DAMAGES, AT LEAST FOR THE STATE CLASSES, THAT COULD BE IN THE  
20 RANGE OF 40 MILLION.

21 FOR THE WIRE TAP CLAIMS, THOSE ARE -- THOSE HAVE STATUTORY  
22 DAMAGES. FOR THE CALIFORNIA CLAIM IT'S, I BELIEVE \$5,000 PER  
23 VIOLATION, AND FOR THE FLORIDA CLAIMS, \$1,000 PER VIOLATION.  
24 THOSE TRANSLATE TO VERY, VERY LARGE NUMBERS, IN THE BILLIONS,  
25 AND IF IT'S APPLIED NATIONWIDE, POTENTIALLY IN THE TRILLIONS.

1 BUT OF COURSE YOUR HONOR, IN RULING ON OUR CLAIMS, HAD  
2 NOTED THAT SOME OF THEM, INCLUDING THE WIRE TAP CLAIMS, BARELY  
3 SURVIVED. AND OF COURSE THE ECPA CLAIM WAS DISMISSED THREE  
4 TIMES WITH PREJUDICE, ALTHOUGH WE WERE OF COURSE TRYING TO  
5 PROVIDE IT THROUGH THE APPEAL PROCESS.

6 SO -- IN ADDITION TO THAT THERE IS THE QUESTION OF UNJUST  
7 ENRICHMENT AND WHAT THE VALUATION FOR THAT WOULD BE, OR  
8 ORACLE'S REVENUES WERE VERY, VERY LARGE INITIALLY, IN THE  
9 ADVERTISING SPACE, THEY HAVE PLUMMETED PRECIPITOUSLY. SO IT'S  
10 VERY, VERY HARD TO KNOW EXACTLY WHAT THAT IS, ALTHOUGH WE  
11 MENTIONED IN THE BRIEF WE THOUGHT IT COULD BE IN THE HUNDREDS  
12 OF MILLIONS.

13 REALLY, WHILE WE OBVIOUSLY BELIEVE OUR CASE -- OUR CLAIMS  
14 ARE VERY, VERY STRONG, THIS IS A VERY INNOVATIVE SET OF CLAIMS  
15 IN A CHALLENGING ENVIRONMENT. EVEN THOUGH THE CLAIMS ARE BASED  
16 ON TRADITIONAL COMMON LAW AND STATUTORY RIGHTS, IT'S BEING  
17 ALLEGED AGAINST A TYPE OF CONDUCT WHERE THOSE LAWS HAVE NEVER  
18 BEEN APPLIED BEFORE. THERE HAS NEVER BEEN A CASE LIKE THIS.  
19 THE PLAINTIFFS HAVE BEEN IN PRIVITY WITH THE DEFENDANT, AND IN  
20 FACT MOST PLAINTIFFS HAVE NEVER EVEN HEARD OF, AND DON'T HAVE  
21 ANY SORT OF UNDERSTANDING OF THE CONDUCT THAT'S ENGAGED IN.

22 SO WHILE WE DID PREVAIL ON A NUMBER OF CLAIMS AT THE  
23 DISMISSAL STAGE, SORT OF PROCEEDING TO TRIAL AND OF COURSE  
24 CLASS CERTIFICATION IS ALWAYS A MASSIVE ISSUE, ORACLE HAS  
25 PREVIEWED ITS ARGUMENTS ON THAT GROUND AND ITS INTENT TO FIGHT

1 THAT VERY AGGRESSIVELY.

2 SO GIVEN THE POTENTIAL CHALLENGES THAT THE CASE FACED,  
3 EVEN IN THE LIGHT OF THESE POTENTIALLY VERY, VERY LARGE  
4 STATUTORY DAMAGES, WHICH OF COURSE CAN BE REDUCED ON DUE  
5 PROCESS GROUNDS, EVEN IF THERE ARE -- EVEN IF WE WIN ON THEM,  
6 THAT THIS SETTLEMENT, WHICH IS STILL VERY, VERY LARGE, AS WE  
7 NOTE, WE THINK IT'S ACTUALLY POTENTIALLY THE THIRD LARGEST OF  
8 ANY NON DATA BREACH PRIVACY CLASS ACTION, IT'S STILL A  
9 PHENOMENAL RESULT IN A CASE COMBINED WITH THE INJUNCTIVE  
10 RELIEF.

11 THE COURT: DO YOU -- THE INJUNCTIVE RELIEF, DO YOU  
12 INCLUDE THAT IN SOME SORT OF ASPECT OF WHAT YOU ARE VALUING THE  
13 CLAIM AND HOW DOES THAT EQUATE TO YOUR REQUEST FOR ATTORNEY'S  
14 FEES.

15 MR. RUDOLPH: WE DON'T PUT A MONETARY VALUE, THAT'S  
16 NOT PART OF OUR CALCULUS HERE. BUT IT IS -- WE THINK IT'S  
17 VERY, VERY IMPORTANT, IT'S ESSENTIALLY CESSATION OF THE CONDUCT  
18 THAT THE COURT FOUND IS THE WIRE TAPPING CONDUCT AT ISSUE IN  
19 THIS CASE, IT REQUIRES THE -- A MONITORING OF CONTRACTURAL  
20 OBLIGATIONS.

21 THE COURT: ISN'T ORACLE GETTING OUT OF THE --

22 MR. RUDOLPH: THAT'S EXACTLY RIGHT.

23 AND IT'S AGAINST THE BACKDROP OF THE ENTIRE BUSINESS  
24 SHUTTING DOWN, AND AS WE NOTED IN OUR PAPERS WE BELIEVE THAT  
25 THIS SETTLEMENT AND THIS CASE CONTRIBUTED TO THAT.

1 SO THAT IS -- OVERALL IT'S -- BUT EVEN ON TOP OF THAT, WE  
2 THINK THAT THE INJUNCTIVE RELIEF HAS VALUE. IN THE EVENT THAT  
3 ORACLE ENGAGES IN THIS CONDUCT AGAIN, STARTS TO RESTART UP THE  
4 BUSINESS, IT WILL STILL BE BOUND TO NOT ENGAGE IN THIS CONDUCT.

5 THE COURT: THE FACT THAT WE HAVE GOT CLASS MEMBERS  
6 FROM DIFFERENT STATES, AND THOSE -- SOME OF THOSE STATES HAVE  
7 DIFFERENT STATUTORY DAMAGE AMOUNTS, HOW DO WE -- HOW DOES THAT  
8 THEN RELATE TO THE IDEA THAT THE CLASS MEMBERS ARE ALL GOING TO  
9 BE TREATED THE SAME FOR PURPOSES OF THEIR RECOVERY.

10 MR. RUDOLPH: RIGHT. SO THERE'S TWO PARTS TO THAT.  
11 SO THERE ARE STATE STATUTORY DAMAGES BUT THERE'S ALSO THE  
12 FEDERAL CLAIM THAT APPLIES TO EVERYONE WHICH ACTUALLY IS  
13 SIGNIFICANTLY LARGER THAN THE OTHER STATES, IT'S 10,000 PER  
14 VIOLATION VERSUS 5,000. AND IT'S ALSO THE CASE THAT UNDER, I  
15 BELIEVE IT'S LANE V. FACEBOOK, THAT THERE ISN'T A REQUIREMENT  
16 THAT ALL CLASS MEMBERS BE TREATED EQUALLY EVEN IF THEY HAVE  
17 CLAIMS THAT MIGHT DIFFER. SORT OF THE PURPOSE OF THE OPT OUT  
18 PROCESS IS TO ALLOW PLAINTIFFS WHO THINK THAT THEY MIGHT HAVE  
19 STRONGER CLAIMS TO OPT OUT OF THE SETTLEMENT AND PROCEED.

20 SO WE DON'T THINK THAT THE FLORIDA AND CALIFORNIA  
21 PLAINTIFFS SHOULD GET SOME SORT OF PREFERENTIAL TREATMENT IN  
22 THIS SETTLEMENT.

23 THE COURT: LANE WAS MY CASE, I BELIEVE.

24 MR. RUDOLPH: I BELIEVE THAT'S RIGHT.

25 THE COURT: JUST COINCIDENTALLY.

1           OKAY. THE OPT OUT PROCEDURE, NOW I'VE GOT SOME PARTICULAR  
2           QUESTIONS TO ASK ABOUT. IT SEEMS LIKE IT'S A FAIRLY CUMBERSOME  
3           OPT OUT PROCEDURE, THERE'S NO E-MAIL OPTION. AS I READ IT, YOU  
4           HAVE TO SIGN SOME DOCUMENT, DOCUSIGN IT AND SEND IT IN IN A  
5           MORE RETRACTED WAY. WHY ISN'T IT -- WHY AREN'T WE MAKING OPT  
6           OUTS A LITTLE EASIER?

7           MR. RUDOLPH: I BELIEVE THIS WAS FOR THE PURPOSES OF  
8           COMPLYING WITH THE GUIDELINES AND MAKING SURE THAT ALL THE  
9           INFORMATION THAT NEEDS TO BE PROVIDED IS PROVIDED.

10          THERE'S A --

11          THE COURT: IT'S A BIT DIFFERENT THAN A CASE -- I  
12          MEAN, IF THE PER CLASS MEMBER RECOVERY WERE QUITE SUBSTANTIAL,  
13          YOU WOULD WANT TO MAKE SURE THAT THE OPT OUT PROCEDURE WAS ONE  
14          THAT CAUSED APPROPRIATE THOUGHT TO GO INTO IT, NOT TO SUGGEST  
15          THAT THIS ISN'T ONE WHERE A CLASS MEMBER SHOULD THINK ABOUT IT  
16          BUT IT'S A FAIRLY SMALLER AMOUNT OF RECOVERY, POTENTIALLY.

17          SO TO MAKE THE OPT OUT A LITTLE EASIER WOULD MAKE SOME  
18          SENSE TO ME. WHEN THE AMOUNT THAT YOU ARE GOING TO GET IF YOU  
19          STAY IN IS PROBABLY BETWEEN \$15 AND \$25, YOU KNOW, TO MAKE YOUR  
20          OPT OUT MORE CUMBERSOME DOESN'T REALLY MAKE SENSE TO ME.

21          MR. RUDOLPH: WELL, THERE IS A FORM THAT THEY  
22          DOWNLOAD AND FILL OUT. AND THAT'S IT, THAT'S THE PROCESS.

23          THE COURT: WELL THEY CAN'T DO IT BY E-MAIL, CAN  
24          THEY?

25          MR. RUDOLPH: IT NEEDS TO BE MAILED PHYSICALLY.



1 THE COURT: WHY?

2 MR. RUDOLPH: I THINK THAT'S JUST TO MAKE SURE THAT  
3 IT'S ORDERLY AND THAT THEY ARE NOT BEING DONE IN A MASS  
4 FASHION, WHICH IS AN ISSUE AND IT'S SOMETHING THAT THE  
5 SETTLEMENT AGREEMENT SPECIFICALLY ADDRESSES THAT THEY HAVE TO  
6 BE SIGNED BY THE INDIVIDUAL. THEY CAN BE DOCUSIGNED, SO THEY  
7 CAN BE SIGNED ELECTRONICALLY, BUT MASS OPT OUTS ARE AN ISSUE.  
8 AND, YOU KNOW, OBJECTORS AND OBJECTORS' COUNSEL TRYING TO  
9 ORCHESTRATE THAT IS AN ISSUE, AND THAT IS ONE OF THE ISSUES  
10 THAT WE ARE TRYING TO ADDRESS HERE.

11 THE COURT: OKAY. ALTHOUGH TO SOME EXTENT WHEN I  
12 HEAR THAT ARGUMENT, MY ATTITUDE IS TO THE EXTENT ONE GROUP  
13 WANTS TO TRY TO EXERT LEVERAGE ON ANOTHER, THAT'S NOT MY  
14 PROBLEM, I'M NOT HERE TO PROTECT ONE GROUP OVER ANOTHER. IF  
15 YOU ARE A PUTATIVE CLASS MEMBER AND YOU THINK YOU'VE GOT  
16 CERTAIN LEVERAGE BY VIRTUE OF, SAY, WHATEVER THE -- IF MORE  
17 THAN TEN PERCENT OPT OUT, THE DEAL IS DONE, THAT KIND OF THING.  
18 I'M NOT CONCERNED ABOUT THAT, THAT'S FINE.

19 SO BUT WHAT I AM CONCERNED ABOUT IS JUST THAT CLASS  
20 MEMBERS, PUTATIVE CLASS MEMBERS HAVE A PROCESS THAT IS EASY AND  
21 DOESN'T HAVE HURDLES THAT ARE REALLY NOT NECESSARY.

22 AND I HEAR YOU, I STILL HAVE SOME QUESTION ABOUT  
23 WHETHER -- I MEAN, IT'S NOT A MAJOR ISSUE, IT'S NOT GOING TO,  
24 AT THE END OF THE DAY FROM MY PERSPECTIVE, HANG UP A  
25 SETTLEMENT, BUT I WOULD ENCOURAGE YOU TO THINK THROUGH THIS A

1 LITTLE BIT BECAUSE IN THE NATURE OF THIS SETTLEMENT, I WOULD  
2 THINK YOU WOULD WANT TO MAKE IT A LITTLE EASIER IF SOMEBODY DID  
3 WANT TO OPT OUT. BUT LET ME MOVE ON TO THE NEXT ISSUE.

4 THIS IS JUST TO TELL YOU WITH RESPECT -- I DID SPEND TIME  
5 GOING THROUGH YOUR PROPOSED ORDER. I APPRECIATE IT, IT'S  
6 HELPFUL, OBVIOUSLY STREAMLINES THE PROCESS; I DO, HOWEVER  
7 THOUGH, RESERVE THE RIGHT TO MAKE SOME ADJUSTMENTS TO IT  
8 OBVIOUSLY, AND I THINK IT WAS PAGE 5 ON THE PROPOSED ORDER, IT  
9 HAS SOME FINDINGS ABOUT HOW THE LANGUAGE IS PLAIN ENGLISH AND  
10 SOME OTHER THINGS THAT SOUNDED TO ME LIKE THEY WERE NOT  
11 NECESSARY.

12 I THINK THAT'S -- IN YOUR CASE, IT I MIGHT BE CONFUSING,  
13 THE NEXT CASE -- ACTUALLY, NO, I THINK IT'S THIS CASE, SO I'M  
14 GOING TO CHANGE IT A LITTLE BIT, BUT I DON'T THINK IN ANY  
15 MATERIAL WAY.

16 OKAY. I HAVE A QUESTION ABOUT THE TIMING OF THE  
17 ATTORNEY'S FEE PETITION. I THINK UNDER OUR GUIDELINES THERE'S  
18 A PERIOD OF TIME -- OH, THAT'S IN A DIFFERENT CASE, THAT'S IN  
19 THE NEXT ONE. HOW MUCH TIME DO YOU HAVE BETWEEN THE FILING OF  
20 YOUR ATTORNEY'S FEE PETITION AND THE FINAL OPT OUT?

21 MR. RUDOLPH: THE GUIDELINES SAY 35 DAYS, WE HAVE  
22 50 DAYS.

23 THE COURT: OKAY. SO YOU WILL FILE YOUR ATTORNEY'S  
24 FEE PETITION 50 DAYS BEFORE THE FILING OF THAT DEADLINE?

25 MR. RUDOLPH: THAT'S RIGHT.

1 THE COURT: THAT'S WHAT I NEED TO KNOW.

2 AND YOU'VE GOT A 25 PERCENT, AT THIS POINT IT LOOKS LIKE  
3 YOU ARE GOING TO BE REQUESTING THE NINTH CIRCUIT BENCHMARK.

4 MR. RUDOLPH: THAT'S CORRECT.

5 THE COURT: OKAY. DID YOU HAVE A DATE FOR THE FINAL  
6 APPROVAL HEARING IN MIND?

7 MR. RUDOLPH: YES. WE DID PUT IN A CHART IN THE  
8 BRIEFING, BUT WE ARE LOOKING TO ATTEMPT TO SCHEDULE IT ON  
9 NOVEMBER 14TH. NOVEMBER 14TH WOULD BE THE PREFERRED DATE.

10 THE COURT: AND WOULD YOU THEN -- YOU'VE GOT SOME  
11 BLANKS OBVIOUSLY IN YOUR PROPOSED ORDER. IF WE USE TODAY AS  
12 THE DATE OF PRELIMINARY APPROVAL, CAN YOU THEN PLUG IN THE  
13 DATES FOR ME?

14 MR. RUDOLPH: YES.

15 THE COURT: AND RESUBMIT IT?

16 MR. RUDOLPH: YES.

17 THE COURT: OKAY. AND YOU WANTED NOVEMBER 14TH. I  
18 THINK THAT WORKS.

19 MR. RUDOLPH: GREAT.

20 THE COURT: SO MS. CHEUNG, ANYTHING YOU WANT TO SAY?

21 MS. CHEUNG: JUST IN RESPONSE TO YOUR QUESTION,  
22 YOUR HONOR, ABOUT MASS OPT OUTS AND THE OPT OUT PROCESS.

23 WE DID WANT TO NOTE THAT OUR UNDERSTANDING IS ONE CONCERN  
24 IS TO DISCOURAGE COUNSEL FROM DRIVING OPT OUTS ON A MASS BASIS  
25 ON BEHALF OF THE PUTATIVE CLASS MEMBERS WHERE UNFORTUNATELY WE

1 HAVE SEEN THERE ARE SITUATIONS WHERE OPT OUTS ARE DRIVEN BY  
2 COUNSEL RATHER THAN THE INDIVIDUALS.

3 THE COURT: BUT SHOULD I PROTECT AGAINST THAT?

4 I MEAN, I UNDERSTAND WHY YOU DON'T WANT IT, BUT AT A  
5 CERTAIN LEVEL IT'S AN OPEN MARKET OUT THERE. IF COUNSEL-DRIVEN  
6 OR OTHERWISE RECRUIT PEOPLE TO OPT OUT AND THERE ARE PUTATIVE  
7 CLASS MEMBERS, SHOULD I, YOU KNOW, SIGN OFF ON AN AGREEMENT TO  
8 SOMEHOW PROTECT YOU AGAINST THAT? I GUESS THAT'S THE QUESTION.  
9 I UNDERSTAND WHY YOU DON'T WANT IF, BUT THAT DOESN'T MEAN I  
10 NECESSARILY SIGN OFF ON IT.

11 MS. CHEUNG: ONE OF THE CHALLENGES WE HAVE SEEN IS  
12 THAT WHEN UNDER THOSE SITUATIONS, WE ARE SEEING SITUATIONS  
13 WHERE THE OPT OUTS ARE UNFORTUNATELY NOT VALID. SO IT DOES  
14 CREATE MORE COST IN TERMS OF ADMINISTRATION AND FRAUDULENT OPT  
15 OUTS THAT NEED TO BE ADDRESSED.

16 THAT IS SOMETHING THAT WE WOULD TAKE A CLOSE LOOK AT AND  
17 THE ADMINISTRATOR WOULD CERTAINLY TAKE A CLOSE LOOK AT, BUT IT  
18 IS UNFORTUNATELY A REALITY OF RECENT CLASS ACTION SETTLEMENTS.

19 AND SO ONE OF THE ISSUES, AND WE DON'T BELIEVE THAT THE  
20 OPT OUT PROCESS IS OVERLY BURDENSOME BUT IT IS A CONCERN IN  
21 TERMS OF FRAUDULENT OPT OUTS THAT WE DID WANT TO AT LEAST TRY  
22 TO ADDRESS.

23 THE COURT: AND YOU THINK IF THE OPTION WAS AVAILABLE  
24 TO THE PUTATIVE CLASS MEMBER TO OPT OUT BY WAY OF AN E-MAIL, IF  
25 THEY HAVE TO DOCUSIGN IT AND PERHAPS THEN SEND IT IN

1 ELECTRONICALLY, THAT THAT WOULD ACTUALLY BE DANGEROUS SOMEHOW?

2 MS. CHEUNG: IT DOES INCREASE THE RISK JUST BECAUSE  
3 IT DOES MAKE IT EASIER FOR SOMEONE TO FABRICATE AN OPT OUT  
4 RATHER THAN HAVING SOMEONE PERSONALLY SIGN AND MAIL IT.

5 THE COURT: WELL I CERTAINLY DON'T WANT FABRICATED  
6 OPT OUTS, SO IF THAT'S A REAL CONCERN, THAT'S ONE THAT I WOULD  
7 BE CONCERNED ABOUT. IF, HOWEVER, THE PROCESS IS BEING  
8 IMPLEMENTED IN ORDER TO DISCOURAGE OPT OUTS, THAT'S WHAT CAUSES  
9 ME SOME PROBLEMS. I DON'T WANT TO MAKE IT -- I DON'T WANT TO  
10 PUT OBSTACLES IN THE PATH OF PEOPLE WHO SAY, I DON'T WANT TO  
11 OPT OUT OF THIS, I DON'T LIKE -- YOU KNOW, FOR ALL SORTS OF  
12 REASONS, I DON'T WANT TO BE PART OF THIS. I WANT TO GIVE THEM  
13 AN OPTION TO DO THAT AND MAYBE THERE'S SOME PLACE IN BETWEEN TO  
14 PROTECT AGAINST SOME SORT OF FRAUDULENT PRACTICE, WHICH OF  
15 COURSE I DON'T THINK WE WANT TO SANCTION, BUT MAKING IT HARD.

16 AS I SAY, I'M NOT -- IT'S NOT A MAJOR PIECE OF THIS, SO  
17 IT'S -- I'M NOT PROPOSING THIS IS GOING TO HANG ANYTHING UP,  
18 BUT I MAY THINK ABOUT IT A BIT FURTHER.

19 OKAY. SO ANYTHING ELSE?

20 MS. CHEUNG: NO, YOUR HONOR. THANK YOU.

21 THE COURT: OKAY. SO I DO FIND THIS SETTLEMENT  
22 CERTAINLY FALLS WITHIN THE PARAMETERS OF WHAT'S FAIR REASONABLE  
23 AND ADEQUATE AND I WILL PRELIMINARILY APPROVE IT AND APPROVE IT  
24 AS OF THIS DATE.

25 I WILL ASK COUNSEL THEN TO GIVE ME A NEW PROPOSED ORDER

1 THAT HAS SOME DATES PUT IN THERE. AND AS I SAY, I THINK I WILL  
2 GO BACK AND LOOK, BUT I THINK IT WAS ON PAGE 5 WAS WHERE I WAS  
3 GOING TO OMIT A COUPLE OF SENTENCES, BUT I DON'T HAVE IT HANDY  
4 HERE. THAT WAS MY -- YEAH. I THINK SO, BUT I DON'T HAVE IT.

5 ANYWAY, LET ME LOOK AT ONE MORE PLACE. OKAY. THERE'S THE  
6 PROPOSED ORDER. YEAH. THE SENTENCE THAT SAYS -- IT'S ON  
7 PAGE 5 OF YOUR PROPOSED ORDER, AND YOU CAN STREAMLINE IT FOR ME  
8 BY TAKING IT OUT ON THE NEW ONES, THE NEW ONE YOU ARE GOING TO  
9 GIVE ME, THE SENTENCE THAT STARTS, "THE COURT FURTHER FINDS THE  
10 NOTICES ARE WRITTEN IN PLAIN LANGUAGE, USE SIMPLE TERMINOLOGY  
11 AND ARE DESIGNED TO BE READILY UNDERSTOOD. THE COURT FURTHER  
12 FINDS THAT THE NOTICE FULLY COMPLIES WITH THE U.S. DISTRICT  
13 COURT FOR THE NORTHERN DISTRICT'S PROCEDURAL GUIDELINES FOR  
14 CLASS ACTION SETTLEMENTS." I DON'T THINK WE NEED THOSE TWO  
15 SENTENCES, SO TAKE THOSE OUT.

16 AND LET ME SEE IF THERE WAS ANOTHER -- I THINK THAT WAS  
17 THE ONLY CHANGE.

18 FOR SOME REASON YOU TOLD ME NOW IT'S 50 DAYS, WHICH IS  
19 FINE WITH ME BUT I PUT A NOTE HERE THAT I HAD SOME CONCERN IT  
20 WAS ONLY 14 DAYS BEFORE THE FINAL HEARING THAT THE ATTORNEY'S  
21 FEE PETITION WOULD BE FILED, BUT MAYBE I MISREAD THAT.

22 MR. RUDOLPH: THE OPT OUT DEADLINE IS 14 DAYS BEFORE  
23 THE HEARING.

24 THE COURT: THE OPT OUT, THEY HAVE TO OPT OUT WITHIN  
25 14 DAYS BUT THEY WILL HAVE HAD THE PETITION FOR 50.

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MR. RUDOLPH: THAT'S RIGHT.

THE COURT: OKAY. THAT'S FINE WITH ME.

OKAY. VERY GOOD. THANK YOU.

MR. RUDOLPH: THANK YOU, YOUR HONOR.

MS. CHEUNG: THANK YOU, YOUR HONOR.

(THE PROCEEDINGS WERE CONCLUDED AT 1:54 P.M.)

**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE  
INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF  
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink, appearing to read "Summer Fisher", written over a horizontal line.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATE: 10/10/24